

1 JUDGE STIRMER: You don't object to any of
2 this?

3 MR. DUNNE: No, sir.

4 JUDGE STIRMER: Well, that is going to save
5 us some time, Mr. Dunne.

6 MR. DUNNE: I thought so -- it would, Your
7 Honor.

8 JUDGE STIRMER: There are certain things that
9 I'd like clarified, though. So, why don't I just go
10 through these exhibits and ask a few questions about
11 certain parts of them. Off the record for a moment.

12 (Off the record.)

13 (On the record.)

14 JUDGE STIRMER: Look at Mass Media Bureau
15 Exhibit 17. Now, there's numerous attachments to this
16 exhibit. Now, what, what is this?

17 MR. SHOOK: Your Honor, essentially these
18 refer to KOKS's efforts to resolve the complaints that
19 they had received and --

20 JUDGE STIRMER: Is this, is this -- for
21 example, looking at the first, first thing from -- it
22 looks like Elizabeth Hart. Do you see that first
23 attachment?

24 MR. SHOOK: Yes, Your Honor.

25 JUDGE STIRMER: Now, is this something that

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1 the station sent out?

2 MR. SHOOK: Your Honor, what the -- the
3 scenario here is that --

4 JUDGE STIRMER: Or is this something that
5 Mrs. Smith sent out --

6 MR. SHOOK: Correct.

7 JUDGE STIRMER: -- to these people?

8 MR. SHOOK: Correct. Mrs. Smith was involved
9 in preparing -- oh, I don't know what you might want to
10 call it -- a handbill or something which described in
11 her view what the problem was.

12 JUDGE STIRMER: All right. Now, this --
13 that's what these things are with regard to, to the
14 attachments to --

15 MR. SHOOK: Right. And then on some of
16 these, you'll notice they have little notations at the
17 top --

18 JUDGE STIRMER: Yeah.

19 MR. SHOOK: -- and those notations were
20 prepared by the station --

21 JUDGE STIRMER: I see.

22 MR. SHOOK: -- and are supposedly reflective
23 of what the station did in response to the particular
24 complaint.

25 JUDGE STIRMER: Okay. All right. All right.

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1 Now, look at 26. Now, what are these supposed to be,
2 the attachments to 26? The first one is Marie
3 Christian.

4 MR. SHOOK: This is supposed to be reflective
5 of a home visit by KOKS to Marie Christian for the
6 purpose of complying with the October 30, 1990,
7 directive that it go to homes within the blanketing
8 contour and restore television service.

9 JUDGE STIRMER: Right. Now, how about the
10 entries in this thing? For example, at 1:25 p.m.
11 Channel 12 coming in fine. At 1:25 p.m., Channel 6
12 coming in fine. No audio or KOKS coming in on Channel
13 6. At 1:25 p.m., Channel 15, 15 coming in fine.
14 Now --

15 MR. SHOOK: It's our understanding, Your
16 Honor, that those were notations made by station per-
17 sonnel, either Mr. Lampe, Mr. Stewart, or Mrs. Stewart,
18 and then there was a place for the individual who was
19 visited to sign his or her name to verify that the
20 individuals in question were there and had actually
21 performed the work noted.

22 JUDGE STIRMER: Right.

23 MR. SHOOK: Now, in terms of whether -- and,
24 and I suppose, although I, I can't say this with any
25 certainty, there is the possibility that the individual

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1 was also attesting to whatever opinion had been given
2 by station personnel as to what the effects of the work
3 were.

4 JUDGE STIRMER: Yeah. All right. Okay. All
5 right. So, there being no objection to any of these
6 exhibits, I will receive them all.

7 (Whereupon, the documents
8 marked for identification as
9 KOKS Exhibit Nos. 1 through 28
10 were received into evidence.)

11 JUDGE STIRMER: All right. Now, Mr. Dunne,
12 what witnesses do you want for cross-examination?

13 MR. DUNNE: Well, D. Ramage, Doris L. Smith,
14 I. Jean Hillis, Dariel or Dairrel L. Denton, Jr., Sandra
15 Durbin, Clara Freeman, Joanne Gray, Edward R. Hodgins,
16 Michael O. Beckham, Mary J. Wynn, and Craig Meador.

17 JUDGE STIRMER: Hodgins. Who else?

18 MR. DUNNE: Beckham, Wynn, and Meador.

19 JUDGE STIRMER: That's 11 witnesses, correct?

20 MR. DUNNE: That's correct, Your Honor.

21 JUDGE STIRMER: All right. Is there any
22 problem producing those 11 witnesses?

23 MR. SHOOK: Your Honor, we've taken steps to
24 have all of them produced.

25 JUDGE STIRMER: All right. Now --

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1 MR. DUNNE: And I will cooperate as far as
2 working out --

3 JUDGE STIRMER: All right.

4 MR. DUNNE: -- the schedule that's --

5 MR. SHOOK: Yeah. We've been able to work
6 out what we believe to be an appropriate schedule with
7 a view toward completing, you know, this hearing on
8 Friday, as Your Honor had told us earlier.

9 JUDGE STIRMER: All right. Now, what is the
10 possibility, reasonably, of completing by early Friday
11 afternoon?

12 MR. SHOOK: Well, Your Honor, I think there
13 is a distinct possibility, depending on how long it
14 takes for the cross-examination of the, you know,
15 various Bureau witnesses. I, I have in mind how
16 long --

17 JUDGE STIRMER: Let me, let me ask you, how
18 long do you think it would take to cross-examine the
19 three witnesses that Mr. Dunne is, is going to produce?

20 MR. SHOOK: I would estimate that it would
21 take all of Tuesday and a good portion of Wednesday.

22 JUDGE STIRMER: Tuesday and Wednesday?

23 MR. SHOOK: I believe our witnesses could,
24 you know, be ready to --

25 JUDGE STIRMER: Okay.

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1 MR. SHOOK: -- appear for testimony as of
2 Wednesday afternoon.

3 JUDGE STIRMER: How about you, Mr. Dunne?
4 How long do you think it would take to cross-examine
5 the 11 witnesses that you want?

6 MR. DUNNE: Your Honor, I think all of -- if
7 we're starting out on Tuesday af-- or, excuse me,
8 Wednesday afternoon, probably --

9 JUDGE STIRMER: Let's, let's say we're going
10 to start with you Wednesday afternoon with your cross-
11 examination.

12 MR. DUNNE: I imagine we could be done, you
13 know, Friday by noon, but then I'm probably going to
14 want to call some rebuttal witnesses as well.

15 JUDGE STIRMER: Who would your rebuttal
16 witnesses be?

17 MR. DUNNE: Basically, I'd be recalling, you
18 know, the Stewarts and Mr. Lampe.

19 JUDGE STIRMER: Well, just have them ready.

20 MR. DUNNE: We'll, we'll have them ready,
21 Your Honor, and, believe me, nobody here in this room
22 will want to get out of Poplar Bluff quicker than I
23 will, having been there.

24 JUDGE STIRMER: You've been there once, I
25 take it.

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1 MR. DUNNE: Yes. But I think probably it
2 will be a push to get us finished by Friday.

3 JUDGE STIRMER: Well, that's what we're going
4 to try and do. And I'd say, again, we're going to have
5 to probably have lengthy hearing sessions in order to
6 accomplish that. But I certainly don't want to keep us
7 all over the weekend in Poplar Bluff if we can avoid
8 it. And if by going late we can finish up sometime
9 Friday in the early afternoon, that would keep us from
10 remaining there over the weekend.

11 MR. DUNNE: Okay. Your Honor, also, since
12 this is a field hearing, I'll state for the record that
13 as time goes on and testimony gets, gets in the record,
14 it may be that there will be certain witnesses that
15 we'll not need to call.

16 JUDGE STIRMER: I imagine there will be --

17 MR. DUNNE: If examine --

18 JUDGE STIRMER: Yeah. Excuse me. I -- it's
19 been my experience that a good deal of this may be
20 cumulative and after awhile we may decide -- or you'll
21 may decide that some of these witnesses aren't needed,
22 or you may reach stipulations on certain facts which
23 will eliminate the necessity of calling some of them.
24 I don't know. That's something that you might want to
25 consider.

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1 But what I would urge you to do is confine
2 yourself when we do cross-examine these witnesses to
3 matters that are material and relevant and decisionally
4 significant. Don't deal with things that are of peri-
5 pheral importance that are not going to be decisionally
6 significant. There's a lot of material in these exhi-
7 bits I know that you could probably cross-examine for
8 days. And in the final analysis, if it's not going to
9 develop any decisional significant evidence, then
10 there's no sense in pursuing some of those things.

11 So, I just would caution you all to try and
12 prepare your cross-examination with that in mind.

13 All right. Is that -- does that complete --

14 MR. SHOOK: That concludes the Bureau's case.

15 JUDGE STIRMER: All right. Now, I had those
16 two exhibits that I have to rule on, the reports. Now,
17 when, when do you want me to do that? I want to have
18 an opportunity to read those reports. Again, I just --

19 MR. DUNNE: Frankly, Your Honor, I -- if you
20 want to wait until tomorrow morning, would feel better,
21 you know, sleeping on it, I would have no objection if
22 you ruled tomorrow morning.

23 JUDGE STIRMER: Well --

24 MR. DUNNE: I'm not going to leave town
25 till --

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1 JUDGE STIRMER: I'm not going to convene a, a
2 session just to rule on that.

3 MR. DUNNE: I understand, Your Honor.

4 JUDGE STIRMER: But what I could do is I can
5 review these things and then let you know how I'm going
6 to rule, and then make the ruling during the beginning
7 phases of the hearing in Poplar Bluff, or in fact rule
8 at that time, if you would prefer that. With that --

9 MR. DUNNE: Your Honor, I would prefer that
10 you made a ruling before we went to Poplar Bluff.

11 JUDGE STIRMER: All right.

12 MR. DUNNE: It would have an impact on my
13 preparation.

14 JUDGE STIRMER: All right. And how about
15 you?

16 MR. SHOOK: Your Honor, if, if, for example,
17 you knew the bottom line as of tomorrow morning, I
18 mean, simply tell us one way or the other, and then if
19 you want to elaborate, you know, either by way of a
20 written order --

21 JUDGE STIRMER: Yeah.

22 MR. SHOOK: -- or on the record, that could
23 wait --

24 JUDGE STIRMER: Let me pursue this. If, if I
25 do admit the exhibits, they will be for the purpose of

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1 merely showing what these exhibits are in the way of
2 reports that were prepared by Commission engineers at
3 the time they were prepared with, with what was con-
4 tained therein, not necessarily, again, to accept every
5 word therein as being the truth of the matter, because
6 we have no one here to tell us that that is the fact.
7 But it could be received, if I do receive it, for the
8 purpose of showing that this is a Commission report
9 that was rendered with respect to the matters in issue
10 in this proceeding.

11 But, again, I want to read that -- those
12 reports and see what they say, and I'll, I'll do that
13 sometime today or, or this evening.

14 All right. Is there anything further, then,
15 at this time?

16 MR. DUNNE: Your Honor, I just want to, want
17 to repeat. I'll provide before the close of business
18 today to the -- by courier to the court reporter record
19 copies of the, of the exhibits that I did not bring
20 today. And I apologize to Your Honor for that.

21 JUDGE STIRMER: All right. Very well.

22 MR. SHOOK: Your Honor, we have nothing
23 further.

24 MR. DUNNE: And I also will provide copies to
25 you, since you haven't seen them, and also to the court

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1 reporter of Exhibits 8, 8, 9, and 10 that we admitted
2 as well.

3 JUDGE STIRMER: All right. Is there anything
4 further, then, that we can --

5 MR. DUNNE: I have nothing.

6 JUDGE STIRMER: -- take care of at this time.
7 All right, then. We will stand in recess until we
8 reconvene in Poplar Bluff at 10:00 on next Tuesday
9 morning.

10 And I will notify you, Mr. Dunne and Mr.
11 Shook, of my rulings with respect to the admissibility
12 of KOKS Exhibits 5 and 6.

13 MR. DUNNE: Thank you, Your Honor.

14 JUDGE STIRMER: All right. If there's noth-
15 ing further, then we will stand in recess at this time.

16 MR. SHOOK: Thank you, Your Honor.

17 JUDGE STIRMER: Thank you very much.

18 (Whereupon, at 12:30 p.m., the hearing was
19 adjourned.)
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23
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WASHINGTON, D.C.

Place

NOVEMBER 12, 1992

Date

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